?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 13.11.2018

*CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

+W.P(MD)No.18487 of 2018
and
W.M.P(MD)No.16390 of 2018

#A.Sundaraj ... Petitioner

Vs.

$1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Competent Authority and District
Revenue Officer,
Land Acquisition National Highways,
Tirunelveli @ Nagercoil,
Kanyakumari District.

3.The Project Director cum DGM (Tech),
No.314E, K.P Road,
Near Ayappan Kovil,
Parvathipuram,
Kanyakumari District.

4.The Union of India,
Rep. by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi.

5.The Special Tahsildar (LANH Unit III),
Vilavancode, Thiruthuvapuram,
Kanyakumari District.

6.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

7.The Land Surveyor,
O/o.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District. ...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the sixth respondent to pass orders on the representation, dated 24.05.2018 for measuring the petitioner-s land in Survey No.830/5 measuring an extent of 7.75.0 cents at Valvachagostam Village, Kalkulam Taluk, Kanyakumari District and fix boundary stones.

!For Petitioner : Mr.G.Justin
^For RR 1, 2, 4 to 7 : Mr.B.Bagavathy,
Government Advocate.

For R ? 3 : Mr.Su.Srinivasan

:ORDER
This writ petition has been filed seeking a writ of Mandamus, to direct the sixth respondent to pass orders on the representation, dated 24.05.2018 for measuring the petitioner-s land in Survey No.830/5 measuring an extent of 7.75.0 cents at Valvachagostam Village, Kalkulam Taluk, Kanyakumari District and fix boundary stones.

2. The case of the petitioner is that the land comprised in Survey No.830/5 measuring an extent of 35 cents, out of 67.50 cents, was allotted to the petitioner as -C- schedule in the partition deed, dated 08.05.1963, which was registered as Document No.1412 of 1963 and the remaining extent of 15 cents and 12.50 cents were allotted to the petitioner as -B- schedule in the partition deed, dated 14.06.1988, which was registered as Document No.1134/1988 and 10 cents was demarcated as common family cemetery and in the said extent, he was entitled to five cents and thereby, he was the owner of 67.50 cents of land in Survey No.830/5.

3. In the said land, an extent of 2390 square meters was acquired for National Highways No.47 between Kerala and Tamil Nadu border Kanyakumari section K.M.43/000 to K.M 296/714, in Vaalvachagostam Village, Kalkulam Taluk, Kanaykumari District and the remaining extent of 7.750 cents is in possession and enjoyment of the petitioner. In the said land one traced house measuring a plinth area of 1450 square feet with standing trees and there is a compound wall on all sides for the extent of five cents and for the remaining extent of 2.750 cents, there are standing trees abating the streets. The said lands were not acquired under the acquisition proceedings as per the award, dated 24.01.2018.

4. The respondents initiated Land Acquisition proceedings, as per the provisions of the National Highways Act, 1956 under Section 3D(1) Notification No.374~SO438E, dated 25.02.2011, which was published in the Official Gazette of India. After due enquiry, award dated 27.10.2014 was passed in Award No.5 of 2015, wherein the compensation payable was determined by the second respondent. The second respondent, by proceedings dated 21.02.2018 passed orders sanctioning compensation to the petitioner and the compensation amount paid to the petitioner under different heads are extracted hereunder:~

?Thiru.Sundar Raj ? R.S.No.830/5
Thiru.Sundar Raj, S/o.Anantha Padmanabhan produced a partition deed Document No.1134, dated 16.06.1998. As per the document Thiru.Ramalingam Nadar, S/o.Anantha Padmanabhan has gifted an extent of 27.500 cents of land to Thiru.Sundar Raj, S/o.Anantha Padmanabhan and Document No.1412, dated 08.05.1963 an extent of 35 cents of land by Thiru.Ramalingam Nadar, S/o.Anantha Padmanabhan to Thiru.Sundar Raj, S/o.Anantha Padmanabhan. He is in possession and enjoyment of the land. Out of this area an extent of 2390 square meter of land is under acquisition. No one challenged the right of possession of the land. The value of structure and trees are not received from the concerned authorities. The structure value and tree value for 110 rubber withheld for want of estimates. On receipt of the same, the proposals sent separately. Hence, the compensation amount worked out below is ordered to be paid to Thiru.Sundar Raj, S/o.Anantha Padmanabhan.

Thiru.Sundar Raj~R.S.No.830/5

1.
Nature of land
Dry

2.
Area in square meter
2390

3.
Average of 50% of the total sale deeds of the highest sale price for the three years preceding date of publication 3A
618.33

4.
Market value specified in the Indian Stamp Act 1989 (GLR)
220

5.
Rate adopted by CALA/sq.meter
618.33

6.
Market value of land

1477808.7
7.
Value of land

1477808.7
8.
Structure value (tomb)
83137.5

9.
Salvage @ 6%
4988.25

10.
Salvage @ 4%

11.
Net structure value

78149.25
12.
Trees value (Anjili ? 35, Jack ? 3, Rubber ? 110, Palm ? 3, Kattumaram ? 1, veppu ? 1, nelli ? 1.

116643
13.
Total value of land + structure + tree

1672600.95
14.
Solatium @ 100% u/s 30(1)

1672600.95
15.
Additional compensation @ 12% as allowed in Section 30(3)

Land value as in col.6 1477808.7 X 12 X 1928/100 X 365
936728.28

Structure value 78149.25 X 12 X 228/100 X 365
5857.98

Tree value 116643 X 12 X 682/100 X 365
26153.60

16.
Total additional compensation

968739.86
17.
Total compensation (13+14+16)

4313941.76
18.
Rounded to rupee

4313942.00

5. The said compensation amount was paid to the petitioner as per the Central Act, 30 of 2013 and the said proceedings are reflected in the tabular column extracted above. The total extent of land owned by the petitioner in Survey No.830/5, as per the document of title, is 67.500 cents. The extent of 2390 square meter is equivalent to 59.750 and thereby the extent of 7.750 cents is the remaining extent of land, which is not acquired in R.S.No.830/5, which is in possession and enjoyment of the petitioner.

6. Since the said portion of the land is the absolute property of the petitioner, the third and fourth respondents have no right to disturb the possession and enjoyment of the petitioner and the acquired land was already taken possession by the respondents. Since the respondents 3 and 4 attempted to interfere with the peaceful possession and enjoyment of the petitioner, in order to demarcate the boundary, the petitioner made a representation, dated 24.05.2018 before the sixth respondent and the same is pending. Since no action has been taken by the sixth respondent, the present Writ Petition has been filed.

7. Mr.Su.Srinivasan, learned counsel appearing for the third respondent submitted that the authority has no objection in demarcating the said boundaries and allot the remaining extent of land to the petitioner.

8. The learned Government Advocate appearing for the respondents 1, 2 and 4 to 7 submitted that the authority concerned will consider the representation of the petitioner, after perusing the materials produced by the petitioner and pass orders.

9. Based on the above submissions made by the learned counsel appearing for the respondents, the concerned authority is directed to consider the representation of the petitioner, dated 24.05.2018 for measuring his land in Survey No.830/5 measuring an extent of 7.75.0 cents at Valvachagostam Village, Kalkulam Taluk, Kanyakumari District and fix boundary stones and after perusing the materials produced by the petitioner, pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above directions, this Writ Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Competent Authority and District
Revenue Officer,
Land Acquisition National Highways,
Tirunelveli @ Nagercoil,

Kanyakumari District.

3.The Project Director cum DGM (Tech),
No.314E, K.P Road,
Near Ayappan Kovil,
Parvathipuram,
Kanyakumari District.

4.The Union of India,
Rep. by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi.

5.The Special Tahsildar (LANH Unit III),
Vilavancode, Thiruthuvapuram,
Kanyakumari District.

6.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

7.The Land Surveyor,
O/o.The Tahsildar,
Kalkulam Taluk, Kanyakumari District.